

Interstate Commission on the Potomac River Basin
30 West Gude Dr., Suite 450
Rockville, MD 20850
301-984-1908
www.potomacriver.org



Request for Proposal

A Review of the Potomac River Low Flow Allocation Agreement

Important Dates

July 14, 2017	Issuance of RFP
August 4, 2017	Proposal submission deadline
September 1, 2017	Approximate date for ICPRB to notify applicants of selection

Project Description

In 1978, the United States of America, the State of Maryland, the Commonwealth of Virginia, the District of Columbia, the Washington Suburban Sanitation Commission and the Fairfax County Water Authority, signed the Potomac River Low Flow Allocation Agreement (LFAA). The LFAA provided for an allocation of the Potomac River for drinking water purposes in the metropolitan Washington area during periods of extreme low flow and it has served as an important backstop to other water management planning and decision making actions. Since its adoption 39 years ago, however, there have been changes to population, water demand and use, laws and regulations, threats to supply and understanding of the metropolitan area's water resources and the ecology of the Potomac River. In recognition of those changes, the Interstate Commission on the Potomac River Basin (ICPRB) is seeking a contractor to conduct a review of that Agreement, its subsequent Modifications, and a related Memorandum of Intent (collectively referred to as the LFAA), resulting in a report that identifies aspects that the governing parties to the LFAA might, in a subsequent process, consider for amendment. The report will document the applicable laws, regulations, and practices that apply to the LFAA, the perspectives of the LFAA's governing and member parties on possible amendments, and other factors that might relate to changes to the LFAA. The LFAA is available on ICPRB's website at <https://www.potomacriver.org/wp-content/uploads/2014/12/LFAA-Scanned-Feb-4-20091.pdf>

Specific tasks for contractor

1. Review and understand the LFAA plus relevant documents contemporaneous with the LFAA negotiation and adoption.
2. Review and understand current applicable District of Columbia, Maryland, Virginia, and Federal, laws and regulations.
3. Interview each of the LFAA parties to identify their positions and concerns, etc.
4. Write a draft report that a) describes the original intent of the LFAA; b) identifies the portions of the Agreement that might be amended to account for changes in law or regulation, water demand, threats to supply, the metropolitan area's water resources and the ecology of the Potomac River and to prepare for future application of the LFAA; and c) presents the facts and perspectives relevant to a discussion of each suggested amendment.

5. Write a final report that addresses comments on the draft received from ICPRB (who will solicit and organize comments from the LFAA parties).
6. Provide a briefing to the LFAA parties about the findings of the report.
7. Provide a briefing to the ICPRB Commission about the report at its March 6, 2018 meeting.

Role of ICPRB

In addition to being the contracting agency, ICPRB will assist the Contractor by: providing access to its library of historical documents; facilitating communications with LFAA parties; and by providing its institutional knowledge of the LFAA and how it has functioned since 1978.

Budget

This will be a \$60,000, fixed price, contract. The awardee will be offered a contract in the form of an ICPRB Service Purchase Contract (Attachment 1).

Project Timeline (subject to modification, depending on actual project start date)

- Week 1 after contract execution: Kickoff meeting between ICPRB and Contractor to review timeline, answer questions, discuss relevant historical documents, and identify contact persons for the LFAA parties and other agencies
- Dec. 1, 2017: Draft report due
- Jan. 15, 2018 (approx.): Contractor provides a briefing for, and Q&A with, LFAA parties
- Feb. 1, 2018: Comments on draft from ICPRB and LFAA parties provided to Contractor
- Feb. 15, 2018: Final report due
- Mar. 6, 2018: Contractor provides a briefing to the ICPRB Commission

Proposals

The proposal, in no more than 10 pages, should include:

1. A detailed description of the contractor's plan to accomplish the tasks described above and that demonstrates an understanding of the project objectives;
2. If more than one person will be involved, then a clear description of roles and level of engagement for each team member;
3. A description of the contractor's relevant prior experience; and
4. A resume of 1 to 2 page length for each member of contractor's team (will not count against the 10 page limit).

Proposals will be reviewed by ICPRB and the LFAA governing parties and the proposal considered most responsive to the project objectives identified above will be selected. Proposal evaluations will be based on the following criteria:

1. Soundness of the proposed approach to address project tasks
2. Professional expertise of the contractor with respect to
 - a) Establishing, amending, and / or implementing agreements between several States (for this purpose, the District of Columbia may be considered a State) and the Federal government for the allocation or sharing of natural resources;
 - b) Water resources management and providing municipal drinking water

ICPRB has the option to request further information from a firm or individual to complete the evaluation.

Proposal Submission

Proposals as MS Word or PDF format documents should be submitted by email to jobs@icprb.org, by C.O.B. August 4, 2017. Questions about this RFP should be submitted by email to the same email address. Responses to questions will be posted on the ICPRB website as they occur so that all potential responders may benefit from the questions and answers.

Enclosures:

Attachment 1 – Example ICPRB Service Purchase Contract

**SERVICE PURCHASE CONTRACT
INTERSTATE COMMISSION ON THE POTOMAC RIVER BASIN**

Provide Service and Bill To:	CONTRACTOR'S INFORMATION:
Interstate Commission on the Potomac River Basin	Name:
30 W. Gude Drive, Suite 450	Address:
Rockville, MD 20850	
301-984-1908	Phone:
	FAX:
Contact for ICPRB:	Contractor Fed ID No (or SSN):

Effective Date:	Total Cost (Not to Exceed)
Completion Date:	\$

SPECIFIED SERVICES:

	Quantity	Unit Price	Total Price

The Contractor offers and agrees to provide the Specified Services at the price(s) set forth above and in accordance with the TERMS AND CONDITIONS FOR SERVICES of this Service Purchase Contract.

COMMISSION SIGNATURE

CONTRACTOR SIGNATURE

Date: _____

Witness: _____

Print Name: _____

Date: _____

Witness: _____

Approved for legal sufficiency _____ Date

SERVICE PURCHASE CONTRACT TERMS AND CONDITIONS FOR SERVICES

INTERSTATE COMMISSION ON THE POTOMAC RIVER BASIN

1. DEFINITIONS: Specific terms used in this document have the following definitions:

- A. "Contract" or "Service Purchase Contract" means the executed document establishing the direct contractual relation between the Commission and the Contractor, including all terms and conditions contained herein or otherwise incorporated.
- B. "Commission" means the Interstate Commission on the Potomac River Basin.
- C. "Contractor" means the individual or firm obligated to perform the services for the Commission under this Contract.
- D. "Specified Services" means the specific contractual obligation of the Contractor, as identified in the Service Purchase Contract or other work statement incorporated therein.

2. CONTRACTOR STATUS: The Contractor shall act as an independent contractor in the performance of all work under this Contract and shall be responsible for providing all supplies and materials necessary for the performance. The Contractor is not an agent or employee of the Commission, shall not represent itself/herself/himself as such, and cannot commit the Commission to any expenditure of funds or enter into any contractual relationship or obligation on behalf of the Commission.

3. CONSIDERATION AND METHOD OF PAYMENT:

- A. The Contractor shall be required to perform the specified services for the amount set forth in the Service Purchase Contract. All services shall be performed within the time period (s) specified in the Service Purchase Contract. The Contractor shall be compensated only for the work performed to the satisfaction of the Commission. The Contractor shall not be paid for travel or per diem expenses or for any purchases of supplies and or equipment except as provided specifically in the Service Purchase Contract.
- B. The Scope of Work and the compensation described in the Service Purchase Contract may be revised only by mutual agreement, in writing. All such changes shall become part of the contractual obligation of the Contract. Costs of negotiation of revision to the Contract shall not be allowable as reimbursable costs under the Contract.
- C. The Contractor shall submit billings for all activities concluded and a brief description of associated activities each month.
- D. Billings shall be due and payable within thirty (30) days of receipt by the Commission of proper invoices. If the Contract is being funded wholly or partially with funds being provided by another agency, the Commission will make payments within thirty (30) days of receipt of funds from the cooperating agency or organization. The payment of any invoice for progress claimed or expenses incurred shall not be deemed to convey the Commission's acceptance of the legitimacy or accuracy of the progress or costs represented by that invoice.
- E. The Contractor shall retain and maintain all records and documents relating to the services to be performed under this Contract for a minimum period of five (5) years after the Commission pays the final billing. The Commission shall have the right, during usual business hours, to examine and audit the records of the Contractor, which the Commission deems necessary or advisable in order to verify invoices submitted pursuant to this Contract.

4. EQUIPMENT: This Contract does not provide for the purchase or rental or lease of any equipment that is not specifically itemized in the Service Purchase Contract.

5. GENERAL CONDITIONS:

- A. The Contractor will comply with all applicable Federal and State statutes relating to nondiscrimination. The Contractor agrees: (a) not to discriminate in any manner against an employee or applicant for employment because of person's age, ancestry, color, creed, gender identity and expression, genetic information, marital status mental or physical disability, national origin, race, religious affiliation, belief or opinion, sex, sexual orientation or any other protected status; (b) to include a provision similar to that contained in subsection (a), above, in any subcontract except a subcontract for standard commercial supplies or raw materials; and (c) to post and to cause subcontractors to post in conspicuous places available to employees and applicants for employment, notices setting forth the substance of this clause.
- B. The Contractor agrees to prosecute all work under this Contract diligently, continuously, and in a timely manner. The Commission will work with the Contractor and the Contractor will work with the Commission on whatever level is feasible to maintain orderly progress towards completion of the specified services of this Contract, and to otherwise fulfill their respective responsibilities as set forth in this Contract.

- C. This Contract shall be binding on both parties, their successors, heirs and assigns.
- D. The Contractor certifies that it (he/she) and its (his/her) principals:
- i. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal, State, or local department or agency.
 - ii. Have not within a three year period preceding this proposal been convicted of or had a civil judgement rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property.
 - iii. Are not presently indicted for or otherwise criminally or civilly charged by a government entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph 2 of this Section; and
 - iv. Have not within a three-year period preceding this Contract had one or more public transactions (Federal, State, or local) terminated for cause or default.
 - v. The Contractor agrees that false certification under this Section may be grounds for termination of this Contract under Article 7 herein.
- E. The Contractor agrees to comply with applicable federal procurement requirements contained in 40 CFR 31.36, especially those requiring the Commission and "prime contractors" to take the affirmative steps set forth therein, when using subcontracts or when purchasing equipment required for this Agreement.

6. DISPUTES: Before any party to this Contract may bring suit in any court concerning an issue relating to this Contract, such party must first seek in good faith to resolve the issue through negotiations and by mutual contract with the other party.

7. TERMINATION:

- A. The Commission may terminate this Contract at any time upon thirty (30) days prior notice, in writing, from the Commission to the Contractor. If the Contract is so terminated, and the Contractor shall not have been in default, the Contractor shall be compensated for all work accomplished but not yet paid.

Upon receipt of a Notice of Termination, the Contractor shall stop work under the Contract on the date and to the extent specified in the Notice of Termination, place no further orders on Subcontracts for materials, services, equipment or facilities except as may be necessary for completion of the portion of work under the Contract as is not terminated, and terminate all orders and subcontracts to the extent that they relate to the performance of work terminated by the Notice of Termination.

- B. In addition, the Commission may, by written notice of default to the Contractor, terminate the whole or any part of this Contract in any one of the following circumstances:

- i. the Contractor fails to perform the services or any one of the tasks specified in the Contract according to professional standards of quality and methodology within the time specified herein and in any extension thereof, or
- ii. the Contractor fails to perform any of the other provisions of this Contract, or so fails to make progress so as to endanger performance of this Contract in accordance with its terms,

and in either of these two circumstances does not cure such failure within a period of thirty (30) days subsequent to written notice of such failure.

- C. Upon such termination, all files, documents, reports, products, etc., complete and incomplete, and other materials relating to this Contract shall become the property of the Commission and shall be delivered not more than thirty (30) days subsequent to the date of notice of termination. Payment for completed work and services accepted by the Commission shall be at the Contract price provided that no payment shall be due and owing to the Contractor unless or until such work and services shall have been determined by the Commissioners to be acceptable to the Commission under the terms of this Contract.

8. MULTI-YEAR RESTRICTION: If the term of this Contract extends into future fiscal years of the Commission, this Contract shall terminate automatically upon the failure of the Commission to receive appropriated or granted funds for such future performance or for the general activities of the Commission. Such termination shall be effective as of the beginning of the fiscal year for which funds were not appropriated or otherwise made available; provided, however, that this will not affect either the Commission's rights or the Contractor's rights under any termination clause in this Contract. The effect of termination of the Contract hereunder will be to discharge both the Contractor and the Commission from future performance of the Contract, but not from their rights and obligations existing at the time of

termination. The Commission shall notify the Contractor as soon as it has knowledge that funds may not be available for the continuation of this Contract for each succeeding fiscal year beyond the first.

9. **COMMISSION SAVED HARMLESS:** The Contractor and all subcontractors shall indemnify and hold harmless and defend the Commission members, officers, employees, and authorized representatives against any liability for any suits, actions or claims for injuries or damages of any character arising from or relating to the performance of the Contractor, and any subcontractor or their employees, agents or representatives under this Contract.

10. **RIGHTS IN DATA AND PUBLIC DISCLOSURE:** The Commission and the Contractor both shall have full rights to the information developed and used in this project. Any preparations or publications of computer programs, reports, studies, etc. shall be executed in full cooperation and shall acknowledge the cooperation of both parties. It is understood by both parties that the final products developed and produced through the joint efforts of the Commission and the Contractor will be available to all interested with a minimal charge for reproducing the data files, documentation and final products, and may be released to the public.

11. **SUBMITTING OR ASSIGNING OF CONTRACTS:** This Contract is intended to be executed by key personnel, if any, designated in the "SPECIFIED SERVICES" of the Contract. However, the benefits and obligations hereunder shall inure to and be binding upon the parties hereto and their respective successors, provided the personnel of any such successor, whether such successor be an individual, a partnership or a corporation, is acceptable to the Commission. The Contractor shall not hire consultants, sublet, sell, transfer, assign or otherwise dispose of this Contract or any portion thereof, or of its right, title or interest therein, without prior written consent of the Commission. However, prior written consent of the Commission shall not be required if a subcontract or assignment was itemized in the "SPECIFIED SERVICES" for this Contract.

In the case of any subcontract, the Contractor agrees to bind the subcontractor and every subcontractor agrees to be bound by all terms of this Contract unless particular provisions are expressly waived in writing by the Commission. Any subcontractor must be provided with a copy of this Contract.

12. **NOTICES:** All notices given under the provisions of this Contract shall be in writing and if mailed to the Commission shall be by certified mail, postage and fees prepaid, mailed and delivered to the address specified in the Service Purchase Contract. Notice to the Contractor shall be given in a like manner to the address listed in the CONTRACTOR'S INFORMATION part of the Commission Service Purchase Contract.

13. **THIRD PARTY RIGHTS:** Nothing in this Contract or any document incorporated herein by reference is intended to or shall be construed to confer upon, or give to, any person, firm or corporation or any government agency, other than the Commission, its successors and assigns and the Contractor any right, remedy or claims legal or equitable, and whether as third party beneficiary or otherwise, this Contract and all provisions applicable hereto or incorporated herein being intended to be and being for the sole and exclusive benefit of the Commission, and the Contractor, and their successors and assigns.

14. **RESTRICTIONS ON LOBBYING:** If this Contract is funded in whole or in part with Federal Funds, exceeding \$100,000, the Contractor is subject to the requirements of Title 40 CFR Part 34 and agrees to comply with said requirements. The Contractor is responsible for ascertaining the source of the funds for this Contract from the Commission. The Contractor, and any subcontractors employed under this Contract, shall submit certification and disclosure forms pursuant to 40 CFR 34.110 to the Commission in a timely manner as required by 40 CFR 34.

15. **INTEGRATION AND MERGER:** This Contract embodies the whole contract of the parties with respect to the subject matter thereof. There are no promises, terms, conditions, obligations, representations or warranties referring to the subject matter, other than those contained herein or incorporated herein by reference.

16. **CONSTRUCTION AND SEVERABILITY:** This Contract shall be governed by the laws of the State of Maryland. Furthermore, it is understood and agreed by the parties, hereto that if any of these provisions shall contravene, or be invalid under the laws of the particular state, county or jurisdiction where used, such contravention or invalidity shall not invalidate the whole contract, but the Contract shall be continued as if not containing the particular provision or provisions held to be invalid in the said particular state, county or jurisdiction and the rights and obligations of the parties shall be construed and enforced accordingly.

17. **ENFORCEMENT:** The failure of the Commission to enforce at any time of the provisions of this Contract, or to exercise any option which is herein provided, or to require at any time performance by the Contractor of any of the provisions hereof, shall in no way be construed to be a waiver of such provisions nor in any way affect the validity of this Contract or any part thereof, or the right of the Commission to enforce each and every such provision.

18. **EFFECTIVE DATE:** It is agreed and understood by the parties hereto that this Contract and any modification or revisions thereof shall not become effective or enforceable until executed by the Commission.